

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re: Carolina Tomato, Inc.,)	PACA Docket № D-08-0066
)	
Respondent)	
)	
and)	
)	
)	
In re: Gary Goodnight)	PACA-APP Docket № 08-0187
)	
Petitioner)	
)	
and)	
)	
In re: Phillip C. Jones)	PACA-APP Docket № 08-0188
)	
Petitioner)	Decision Without Hearing by
)	Reason of Consent

Preliminary Statement

This consolidated disciplinary and responsibility connected proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA) and the regulations issued thereunder (7 C.F.R. Part 46)(the regulations), was instituted by a Complaint filed on February 22, 2008, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture and petitions of review filed September 24, 2008, challenging the responsibly connected status of Petitioner Gary Goodnight and Petitioner Phillip C. Jones (collectively “Petitioners”).

The Complaint alleged that Carolina Tomato, Inc. (Respondent Carolina), failed to make full payment promptly to 36 sellers of the agreed purchases prices, or the balance of those prices, in the total amount of \$9,632,013.90 for 910 lots of perishable agricultural commodities, which Respondent Carolina purchased, received, and

accepted in the course of interstate and foreign commerce.

The Complaint requested that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), the Administrative Law Judge find that Respondent Carolina had violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order the facts and the circumstances be published.

A copy of the Complaint was properly served upon Respondent Carolina, which filed an Answer that denied the Complaint's allegations. Further, in their separately filed petitions for review, Petitioners challenged the determination of the Chief of the PACA Branch that Petitioners were responsibly connected to Respondent Carolina, and Petitioners requested a hearing.

Respondent Carolina, Petitioners, and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent by these parties to the relief requested by Secretary. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice).

Findings of Fact

1. Respondent Carolina Tomato, Inc., is a corporation incorporated and existing under the laws of South Carolina. Respondent ceased operations on or about January 23, 2007. Respondent's business address was 1001 Buff Rd., Shed 12, Columbia, SC 29201. Respondent's business mailing address was P.O. Box 13581, Columbia, SC 29201.
2. At all times material to this Decision, Respondent Carolina was licensed as a corporation under PACA License No. 2000-0729. This license was issued to Respondent Carolina on February 17, 2000 and the license

terminated on February 17, 2007, pursuant to section 4(a) of the PACA (7 U.S.C. § 499a(a)) when Respondent Carolina failed to pay the annual renewal fee.

3. Petitioner Gary Goodnight and Petitioner Phillip C. Jones were owners, officers, or directors of Respondent Carolina.

Conclusions

Respondent Carolina admits the jurisdictional allegations in paragraph II of the Complaint and neither admits nor denies the remaining allegations of the Complaint. Respondent Carolina and Petitioners specifically admit that the Secretary has jurisdiction in this matter. Respondent Carolina and Petitioners waive oral hearing and further procedure, and do not object to the entry of the following order. Complainant agrees to the entry of the following order.

Order

Respondent Carolina is found to have engaged in repeated and flagrant violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to produce sellers the agreed purchase prices, or the balance of those prices, for perishable agricultural commodities which Carolina, the Respondent herein, purchased, received, and accepted in the course of interstate and foreign commerce.

Petitioner Gary Goodnight and Petitioner Phillip C. Jones were responsibly connected to Respondent Carolina during the time Respondent Carolina committed the violations of the PACA. As such, they are subject to the licensing and employment restrictions of section 8(b) of the PACA (7 U.S.C. § 499h(b)) upon issuance of this order.


The parties further agree that the effective date of the issuance of this order shall be December 31, 2009, and that the one (1) year mandatory restrictions on Gary Goodnight and Phillip C. Jones regarding licensing and employment shall commence as of January 1, 2010.

The facts and circumstances of these violations shall be published pursuant to Section 8(a) of the PACA (7 U.S.C. § 499h(a)).


This order shall become final upon issuance. Copies of this order shall be served upon the parties.


Done at Washington, D.C.

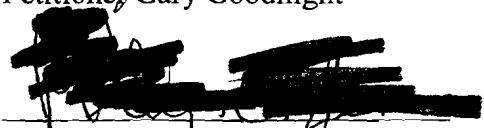
this 31st of December, 2009



Administrative Law Judge

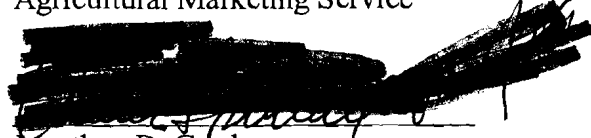
for Respondent



O. Max Gardner III
Attorney for Respondent Carolina


Petitioner Gary Goodnight



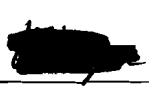

Petitioner Phillip C. Jones


Robert C. Keeney
Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service


Jonathan D. Gordy
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O. Max Gardner III
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Wayne Sigmon
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